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12
13 UNITED STATES DISTRICT COURT
14 DISTRICT OF NEVADA

15 STERLING HARDISTY TAYLOR, an
16 individual,

17 Plaintiff,

18 v.

19 UNITED STATES OF AMERICA and DOES
20 I to X, inclusive; collectively,

21 Defendants.

22 Case No.: 2:22-cv-00435-APG-BNW

23 **STIPULATION AND ORDER TO
24 EXTEND THE DISCOVERY
25 DEADLINES**

26 **(Third Request)**

27 Pursuant to Fed. R. Civ. P. (“FRCP) 6(b)(1) and Local Rules IA 6-1, IA 6-2, and 26-3,
28 Plaintiff STERLING HARDISTY TAYLOR (“Plaintiff” or “Mr. Taylor”), by and through his
attorneys of the law firm of GALLIAN WELKER & ASSOCIATES, L.C., and Defendant UNITED
STATES OF AMERICA (“Defendant” or “United States”), by and through its counsel, Virginia
T. Tomova, Esq., Assistant United States Attorney for the District of Nevada, and Alan W.
Westbrook of the law firm of PERRY & WESTBROOK, hereby submit this Stipulation and Order
to Extend the Discovery Deadlines.

29 This is the third stipulation to extend the discovery deadline, and this stipulation is
30 presented to the Court in advance of the currently calendared close of discovery on October 25,
31 2024. For the foregoing reasons and as is more fully explicated below, the Parties stipulate to

1 and respectfully request that this Court extend the discovery and associated deadlines in this
2 matter.

3

4 **I. PROCEDURAL HISTORY**

5 1. On March 9, 2022, Plaintiff initiated this action by filing his Complaint [ECF No. 1],
6 as later amended on January 31, 2023 [ECF No. 33].

7 2. On January 7, 2022, Defendant filed a Motion to Transfer Venue to District of Utah
8 [ECF No. 9], to which Plaintiff duly responded on August 11, 2022 [ECF No. 10].

9 3. On November 4, 2022, oral arguments were heard by the Court on the Motion to
10 Transfer Venue, further to which supplemental briefing was ordered and scheduled. *See* ECF
11 Nos. 21 -23.

12 4. On December 16, 2022, Plaintiff and Defendant submitted the ordered
13 supplemental briefing [ECF Nos. 24 and 25], following which the Court denied the Motion to
14 Transfer Venue on January 7, 2023 [ECF No. 30].

15 5. On May 22, 2023, following various stipulations to extend the deadline for
16 Defendant's responsive pleading [ECF Nos. 35, 37, 39, 41, and 43], on May 22, 2023, Defendant
17 filed its Motion to Dismiss for Lack of Subject-Matter-Jurisdiction [ECF No. 45], to which
18 Plaintiff duly responded on June 25, 2023 [ECF No. 46], with Defendant's Reply in Support of
19 the Motion to Dismiss [ECF No. 52] filed on June 23, 2023.

20 6. On June 26, 2023, counsel for the parties conducted the requisite FRCP 26
21 conference and filed their proposed Joint Discovery Plan and Scheduling Order on the same day.

22 7. On June 28, 2023, the Court entered its Order confirming the Joint Discovery Plan
23 and Scheduling Order [ECF No. 54].

24 8. On December 19, 2023, the Court entered its Order denying Defendant's Motion to
25 Dismiss for Lack of Subject-Matter-Jurisdiction [ECF No. 56].

26 9. On December 27, 2023, the Court entered its Order extending Defendant's time to
27 file their Answer [ECF No. 58].

28 10. On January 2, 2024, Court entered its Order [ECF No. 60] establishing the present

1 discovery Deadlines.

2 11. On January 26, 2024, Defendant filed its Answer [ECF No. 61].

3 12. On August 9, 2024, the parties submitted related Stipulations for a settlement
4 conference [ECF No. 63] and for a second extension of discovery deadlines [ECF No. 62].

5 13. On August 14, 2024, the Court entered its Orders [ECF Nos. 64, 65] granting both
6 Stipulations, setting a settlement conference for 10:00 a.m. on September 26, 2024, with close of
7 discovery about a month thereafter, on October 25, 2024.

8 14. On August 27, 2024, due to a conflict in the Court's calendar, the settlement
9 conference was rescheduled for 10:00 a.m. on December 4, 2024.

10
11 **II. LEGAL STANDARD**

12 Fed. R. Civ. P. Rule 6(b)(1) governs extensions of time and allows, in relevant part, that
13 “[w]hen an act may or must be done within a specified time, the court may, for good cause, extend
14 the time: (A) with or without motion or notice if the court acts, or if a request is made, before the
15 original time or its extension expires.” If additional time for any purpose is needed, the proper
16 procedure is to present a request for extension of time before the time fixed has expired. *Canup*
17 *v. Mississippi Val. Barge Line Co.*, 31 F.R.D. 282 (W.D. Pa. 1962). An extension of time may
18 always be sought and is usually granted on a showing of good cause if timely made under
19 subdivision (b)(1) of [FRCP 6]. *Creedon v. Taubman*, 8 F.R.D. 268 (N.D. Ohio 1947). Also, a
20 district court possesses the inherent power to control its own docket. *Hamilton Copper & Steel*
21 *Corp. v. Primary Steel, Inc.*, 898 F.2d 1428, 1429 (9th Cir. 1990); *Olivia v. Sullivan*, 958 F.2d
22 272, 273 (9th Cir. 1992).

23 LR IA 6-1 additionally requires that a motion to extend time must state the reasons for the
24 extension requested and will not be granted if requested after the expiration of the specified period
25 unless the movant demonstrates that the failure to file the motion before the deadline expired
26 resulted because of excusable neglect. LR 26-3 requires that a motion to extend any date set by
27 the discovery plan, scheduling order, or other order must, as well as satisfying the requirements
28 of LR IA 6-1, demonstrate good cause for the extension, and such a motion filed after the

1 expiration of the deadline will not be granted unless the movant demonstrates that the failure to
2 act resulted from excusable neglect.

3 Finally, LR 26-3 lists four factors that are considered upon adjudication of a motion to
4 extend a discovery deadline: (a) a statement specifying the discovery completed; (b) a specific
5 description of the discovery that remains to be completed; (c) the reasons why the deadline was
6 not satisfied or the remaining discovery was not completed within the time limits set by the
7 discovery plan; and (d) a proposed schedule for completing all remaining discovery.

8

9 III. ARGUMENT

10 A. **The Four Factors Contained Within LR 26-3 Are Satisfied, and the Parties
11 Show Good Cause for Modifying the Scheduling Order.**

12 1. **Discovery Completed to Date:**

13 1. On July 10, 2023, pursuant to FRCP 26(a)(1), Plaintiff and Defendant exchanged
14 their respective initial disclosures of persons likely to have discoverable information; documents,
15 electronically stored information, and tangible things; computation of damages, and applicable
16 insurance coverage. Plaintiff and Defendant have each supplemented their FRCP 26 disclosures
17 as required over the course of the intervening months.

18 2. On September 14, 2023, Defendant propounded written discovery to which
19 Plaintiff timely responded on October 14, 2023.

20 3. On, respectively, December 11 and 12, 2023, depositions of Mr. Taylor and
21 witnesses Michal Taylor (Mr. Taylor's wife) and Mark Taylor (Mr. Taylor's son) were conducted.

22 4. On February 14, 2024, an FRCP 35 defense medical exam of Mr. Taylor was
23 conducted, further to which exam Defendant issued an expert medical report by Steven M.
24 Sanders, M.D. on March 15, 2024.

25 5. On May 3, 2024, the Parties conducted a site visit and inspection of the Shower
26 (as defined in the Complaint).

27 6. On May 22, 2024, Plaintiff served his expert medical report from Dr. Roger A.
28 Russell, DC, MS, DIANM, along with expert safety report of F. David Pierce, MSPH, CIH, CSP.

1 7. On June 21, 2024, Defendant served its expert safety report of Lane Swainston
2 CBO, CVLT.

3 8. On July 13, 2024, Defendant served its rebuttal expert reports.

4 9. On July 24, 2024, Plaintiff propounded various written discovery, the responses
5 to which are pending and will reasonably necessitate an extension of time to answer, beyond the
6 present close of discovery.

7 10. On August 7, 2024, Defendant deposed Plaintiff's safety expert, F. David Pierce.
8

9 **2. Discovery Remaining:**

10 Defendant's written discovery responses are still pending, and a thirty-day extension
11 therefor has been granted by Plaintiff's counsel. Depositions of remaining party experts, listed
12 below, were vacated following the prior extension of discovery deadlines and, in the interest of
13 conservation of time and money, will only be rescheduled, as needed, following the December 4,
14 2024, settlement conference.

- 15 • Steven M. Sanders, M.D.
16 • Dr. Roger A. Russell, DC, MS, DIANM
17 • Lane Swainston CBO, CVLT

19 **3. Reasons Why Deadline Will Not Be Satisfied or Remaining Discovery
20 Cannot Be Completed Within Current Time Limits**

21 As noted above in the prior request for extension of discovery deadlines, the parties have
22 agreed to defer depositions of the remaining experts in the interest of controlling undue expenses
23 for both parties until after the settlement conference. As rescheduled, the settlement conference
24 will now occur after discovery cutoff and the dispositive motion deadline. Accordingly, the
25 parties seek an extension until after that date to accommodate the new schedule and the
26 contemporaneous holidays.

27 //
28

1 **4. Proposed Schedule for Completing Remaining Discovery:**

2 Event	3 Current Deadlines	4 Proposed New Deadlines
5 Discovery Cutoff	6 October 25, 2024	7 January 17, 2025
8 Deadline to Disclose Experts	9 June 21, 2024	10 No change
11 Deadline for Rebuttal Experts	12 July 22, 2024	13 No change
14 Dispositive Motion Deadline	15 November 25, 2024	16 February 17, 2025
17 Joint Pretrial Order Deadline	18 December 26, 2024	19 March 19, 2025 *

20 * In the event a dispositive motion is under submission by February 17, 2025, the Joint Pre-Trial
21 Order shall be due no later than 30 days after entry of the Court's order ruling on same.

22 All other discovery dates not referenced herein remain unchanged.

23 **IT IS SO STIPULATED.**

24 DATED this 29th day of August 2024.

25 **GALLIAN WELKER & ASSOCIATES, L.C.**



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7 DATED this 29th day of August 2024.

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ORDER

IT IS HEREBY ORDERED that the Stipulation of the parties is GRANTED, and the discovery deadlines shall be amended as follows:

Event	Current Deadlines
Discovery Cutoff	January 17, 2025
Deadline to Disclose Experts	No change
Deadline for Rebuttal Experts	No change
Dispositive Motion Deadline	February 17, 2025
Joint Pretrial Order Deadline	March 19, 2025

IT IS SO ORDERED.

DATED: 8/30/2024

John L. Weller
UNITED STATES MAGISTRATE JUDGE